

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. NO.: 0553-01
BILL NO.: HB 162
SUBJECT: Employees and Employers
TYPE: Original
DATE: January 25, 2001

FISCAL SUMMARY

ESTIMATED NET EFFECT ON STATE FUNDS			
FUND AFFECTED	FY 2002	FY 2003	FY 2004
All State Funds	(Could Exceed \$100,000)	(Could Exceed \$100,000)	(Could Exceed \$100,000)
Total Estimated Net Effect on <u>All</u> State Funds	(Could Exceed \$100,000)	(Could Exceed \$100,000)	(Could Exceed \$100,000)

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2002	FY 2003	FY 2004
Federal Funds	(Could Exceed \$100,000)	(Could Exceed \$100,000)	(Could Exceed \$100,000)
Total Estimated Net Effect on <u>All</u> Federal Funds	(Could Exceed \$100,000)	(Could Exceed \$100,000)	(Could Exceed \$100,000)

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2002	FY 2003	FY 2004
Local Government	(Could Exceed \$100,000)	(Could Exceed \$100,000)	(Could Exceed \$100,000)

Numbers within parentheses: () indicate costs or losses.

This fiscal note contains 7 pages.

FISCAL ANALYSIS

ASSUMPTION

Officials from the following agencies assume the proposed legislation would have no fiscal impact on their agency: **Missouri State Senate, Department of Agriculture, Department of Labor and Industrial Relations, Office of the State Auditor, Harris-Stowe State College, Department of Revenue, Missouri Gaming Commission, Office of the State Treasurer, Central Missouri State University, Missouri Western State College, State Tax Commission, House of Representatives, Office of the Lieutenant Governor, Department of Social Services - Personnel and Labor Relations Section, Department of Health and Truman State University.**

Officials from the **Department of Insurance** assume the department would provide one-time training of managers and supervisors on their responsibilities in complying with disciplinary processes. There would need to be ongoing training for new managers/supervisors and for existing staff on changes to disciplinary processes. This legislation would result in minimal fiscal impact to the department which could be absorbed by existing staff.

Officials from the following agencies assume the proposed legislation would have unknown fiscal impact in the form of additional costs to their agencies: **Office of the Attorney General, Department of Conservation, Department of Economic Development, Department of Corrections, Department of Elementary and Secondary Education, Southwest Missouri State University, Department of Public Safety and Office of Secretary of State.**

Officials from the **Office of State Courts Administrator (OSCA)** assume the proposed legislation would create a new limited cause of action for wrongful discharge. Currently, the general rule in Missouri law is that, absent some intervening factor, employment is "at will" and an employee has no right to continued employment. This proposal would permit civil recovery for wrongful discharge in a number of cases. OSCA officials have no data to indicate how many additional suits may be filed or of those filed how many would proceed to trial. They would expect a number of test cases to proceed through the courts to establish the parameters of the law. After some period of adjustment, employment practices of many employers would probably change to reduce liability exposure. If there are a significant number of additional civil filings, there will be a corresponding workload and budgetary impact. However, no projections are feasible.

Officials from the **Department of Higher Education** assume the likelihood of a wrongful discharge at their agency is remote since all efforts are made to avoid such a situation, there is a small number of staff, and it is rarely necessary to discharge employees. In addition, since the **ASSUMPTION** (continued)

bill requires the employee to exhaust an employer's internal appeals procedures before filing an action, the probability of a lawsuit is diminished even further. It is possible that the department could incur extraordinary legal expenses and other costs associated with a damage award, but it is impossible to estimate these costs. The fiscal impact on the department would likely be minimal but is unknown. The probability of fiscal impact at public colleges and universities is greater due to the higher number of employees and could alter their fiscal and legal relationship with their faculty and staff.

Officials from the **Department of Transportation (DHT)** assume that this proposal could increase legal costs, payments in back wages, interest and punitive damages. Given the broad nature of the language, the number of potential claims which could be filed against the department cannot be determined. Also, the proposal would place a significant burden on the department to provide advance notice of every change to every personnel policy. Therefore, officials from the DHT assume the proposed legislation would have a fiscal impact, but the impact is indeterminable.

Officials from the **Department of Mental Health (DMH)** assume the proposal potentially increases exposure of claims for litigation expenses, relocation expenses, and punitive damages. Currently, DMH personnel policies and department operating regulations provide remediation for alleged wrongful discharge and prohibition of retaliation or harassment of any kind. These potential damages are not easily definable, but each case poses potential awards to employees and may cost the department and the legal expense fund significant amounts of money. Although the proposal expands the types of remediation available to DMH employees, a projection of related costs would be unknown.

Officials from the **Department of Natural Resources (DNR)** do not anticipate any wrongful discharges of employees; however, if a wrongful discharge is alleged and a suit is filed against the DNR, an increase in current workload would be associated with a second process. There is also the potential for punitive damages which cannot be estimated. Therefore, the fiscal impact would be unknown and could potentially impact both the DNR's Federal Funds and Dedicated Funds.

Officials from the **Department of Social Services - Division of Legal Services** assume it is not possible to estimate the exact cost of the impact of this legislation because the number, length and complexity of the future cases under the proposal cannot be estimated with any precision. The size of the damage awards is case dependent and cannot be accurately estimated. Since compensatory and punitive damages are available, cases against the department would likely be referred to the Attorney General's Office for representation in order to access the legal expense ASSUMPTION (continued)

fund. There will be fiscal impact, but the amount cannot be estimated.

Officials from the **Office of Administration - Division of Personnel** (OA) assume that the proposal would not increase the workload of the division or of the Personnel Advisory Board and that it would only be fiscally impacted if one of its employees was discharged and it was determined that the division had engaged in fraud, malice or reckless disregard of the rights of the employee. For this reason, OA assumes no fiscal impact. **Oversight** assumes the fiscal impact would be unknown.

Officials from the **University of Missouri** assume the cost of the proposal would be expensive in imposing additional procedures requiring notice of policy changes and would expose their institution to increased liability. Officials assume the total amount of costs would exceed \$100,000.

For purposes of the fiscal note, **Oversight** assumes that it would be difficult to accurately estimate the number of cases that would be filed against any employer, as defined in this proposal, for wrongful discharge. The definition of employer would include the state, counties, municipal corporations, townships, school districts and any other political subdivision of government. Oversight could not estimate the number of employees who would demand a jury trial nor could the amount of potential damages which could be awarded be estimated. It was assumed that the fiscal impact could exceed \$100,000 annually.

	FY 2002	FY 2003	FY 2004
<u>FISCAL IMPACT - State Government</u>	(10 Mo.)		

ALL STATE FUNDS

Costs-State Agencies

	(Could Exceed	(Could Exceed	(Could Exceed
Legal expenses/damage awards	\$100,000)	\$100,000)	\$100,000)

FEDERAL FUNDS

Costs-State Agencies

	(Could Exceed	(Could Exceed	(Could Exceed
Legal expenses/damage awards	\$100,000)	\$100,000)	\$100,000)

	FY 2002	FY 2003	FY 2004
<u>FISCAL IMPACT - Local Government</u>	(10 Mo.)		

LOCAL FUNDS

Costs-Political Subdivisions

	(Could Exceed \$100,000)	(Could Exceed \$100,000)	(Could Exceed \$100,000)
Legal expenses/damage awards			

FISCAL IMPACT - Small Business

The proposed legislation could potentially have a direct impact on small businesses in the form of legal costs and damage awards if the court determines that an employee has been wrongfully discharged.

DESCRIPTION

The proposal creates a cause of action for wrongful discharge. Employees may sue for wrongful discharge:

- (1) if they are discharged for refusing to violate the law or public policy;
- (2) if the employer violated its own written personnel policy in dismissing the employee. An employee is not required to have actual knowledge of the employer's written personnel policy to claim a violation of that policy; or
- (3) if the employer deviates from a customary practice used for dismissal of employees.

An employee may be discharged at will during a probationary period, which may not exceed 12 months. Further, employees maintain the burden of proof in wrongful discharge suits.

Damages available to the employee include back wages and benefits, plus interest, when the employer violates its own personnel policy or customary practices regarding dismissal. The employee has a duty to mitigate damages by seeking other employment with reasonable diligence. The court may award attorney's fees, court costs, and relocation expenses.

When an employee claims the discharge was in retaliation for the employee's refusal to violate the law or public policy, punitive damages and compensatory damages for physical and mental

DESCRIPTION (continued)

distress are available. To obtain punitive damages, the employee must show by clear and convincing evidence that the employer engaged in fraud, malice, or reckless disregard for the rights of the employee.

Employers subject to the proposal include those employing 15 or more people at least 20 weeks per year, and all employees of the state and its political subdivisions. The proposal excludes federal employees and may not amend or negate the terms of a collective bargaining agreement. Employees must exhaust an employer's established internal procedures which may not exceed 90 days before filing a suit. Lawsuits must be filed within one year of the date of discharge, but internal procedures will toll that date, up to 180 days. The complainant may demand a jury trial.

This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

SOURCES OF INFORMATION

Office of the Attorney General
Department of Higher Education
Office of the State Courts Administrator
Department of Economic Development
Department of Elementary and Secondary Education
Department of Transportation
Department of Mental Health
Department of Natural Resources
Department of Agriculture
Missouri Gaming Commission
Department of Health
Department of Labor and Industrial Relations
Department of Revenue
Department of Social Services - Division of Legal Services
Department of Social Services - Personnel and Labor Relations Section
Missouri House of Representatives
Department of Insurance
Department of Conservation
Office of Administration - Division of Personnel
Office of the Lieutenant Governor
Office of the State Auditor
SOURCES OF INFORMATION (continued)

State Tax Commission

L.R. NO. 0553-01
BILL NO. HB 162
PAGE 7 OF 7
January 25, 2001

Office of the State Treasurer
Central Missouri State University
Harris Stowe State College
Missouri Western State College
University of Missouri
Department of Corrections
Missouri State Senate
Southwest Missouri State University
Office of the Secretary of State
Department of Public Safety
Truman State University

NOT RESPONDING: Lottery Commission, Lincoln University, Missouri Southern State College, Northwest Missouri State University, Southeast Missouri State University, City of St. Louis, Jackson County, St. Louis County, Greene County

A handwritten signature in black ink, appearing to read "Jeanne Jarrett". The signature is stylized with a large initial "J" and a cursive script.

Jeanne Jarrett, CPA
Director

January 25, 2001